STRAITS SETTLEMENTS.

[ORIGINAL CIVIL JURISDICTION]

SPROULE, Ag. C.J.

October 24, 1923.

CHUA SIN GHEE and OTHERS

v.

CHUA TIAN CHOON and OTHERS

[SINGAPORE SUIT No. 138 of 1922]

Chinese Burial Ground—Reservation of part for particular families—Charity—Necessity of Attorney-General being party to proceedings.

Where land is conveyed to trustees upon trust for the purposes of a burial ground for a Chinese Sehnh or Clan, it is permissible and in accordance with Chinese custom that the heads of the Clan (for the purposes of the burial ground) should have special reserves therein for their own family graves. But *semble* that to sever the legal estate by conveying a portion of the land to new trustees upon separate trusts to provide special family burial grounds for such heads of the Clan is a breach of trust and amounts to making away with the trust property.

Where the Attorney-General is a necessary party to a suit concerning a charity it is not essential that he should be Plaintiff and it may be sufficient if he be joined as a Defendant.

Yeo Him & ors. v. *Yeo Cheng Kang & ors.*, 4 Ky. 500, considered.

Action.

On the 2nd January, 1866, the Secretary of State for India, on behalf of the Crown, in consideration of the sum of 102 Rupees 15 annas paid by Choa Beng Seang and Choa Kit Choon, Trustees for the Chinese Burial Ground of the tribe Choa, granted unto them a piece of land in Singapore containing an area of 9 acres 1 rood and 18 poles to have and to hold the same unto the said Choa Beng Seang and Choa Kit Choon, Trustees as aforesaid and their heirs, executors and assigns for ever. Various assignments acts in the law and events took place affecting the title to the land. Later, in the year 1921, the Government of the Straits Settlements acquired part of the land for public purposes and a sum of money became payable by the Government in respect of such acquisition. Thereafter the interest of the tribe Chua was aroused and meetings of the clan "Chua" were summoned to discuss the position. At one such meeting a number of persons were appointed to be new trustees (for what such appointment might be worth). The representatives in interest of the original Trustees did not submit to this supersession and they did not recognise the *soi-disant* new trustees. Thereupon the new trustees commenced an action against the representatives of the old trustees claiming that they (the new trustees) either were or should be appointed trustees and that the Defendants either were not trustees or if they were trustees should be removed, and claiming also consequential relief. The defendants, while admitting all the facts relative to the title to the land, set up that the Plaintiffs were not and ought not to be trustees and that the Defendants had not been guilty of any neglect in looking after the burial ground and that the Statement of Claim disclosed no cause of action and that the Plaintiffs were not entitled to sue at all except as representatives of all the members of the Sehnh or tribe "Chua" other than the Defendants, and they took objection that the Court had no jurisdiction because the Attorney General was the only proper Plaintiff. After appearance to the writ of summons the Defendants moved for an Order that the Writ of Summons and Statement of Claim should be set aside on the ground that this action should have been brought in the name of the Attorney General of the Straits Settlements or in the alternative that the name of the Attorney General should be added as a party to the action. On such application, Mr. Justice Barrett-Lennard on the 28th January 1922 made an Order that the Attorney General be added as a Defendant in this action to the Writ of Summons and that the Statement of Claim be amended accordingly. The Attorney General was accordingly added as a Defendant and the pleadings were amended to those of a representative action, the Plaintiffs thenceforward suing on behalf of themselves and all the members of the Sehnh Chua other than the Defendants.

Thereafter the Defendants filed their Defence, the nature of which is indicated above.

Mundell (*Laycock* with him) for Plaintiffs.

E. R. Koek for 1st, 2nd, 3rd and 4th Defendants.

Cur. Ad. Vult.

SPROULE, AG. C.J.—By Grant 74 dated 2nd January, 1866, the Government of India conveyed 9 acres 1 rood 18 poles of land in consideration of Rs. 102 annas 15 to Choa Beng Seang and Choa Kit Choon in fee.

The grantees were two of three brothers, Choa Beng Seang, Choa Beng Kay (also called Kit Choon) and Choa Beng Toh (also called Hood Toh).

The Grant described these grantees as follows:—

> "Choa Beng Siang and Choa Kit Choon Trustees for the Chinese Burial ground of the tribe Choa, of the second part."

The consideration was said to have been paid "by the said Choa Beng Seang and Choa Kit Choon Trustees as aforesaid." The Grant was "unto the said Choa Beng Seang and Choa

Kit Choon Trustees as aforesaid." The habendum was

> "To Have and To Hold the same unto the said Choa Beng Seang and Choa Kit Choon, Trustees as aforesaid their heirs executors administrators and assigns for ever."

The testamur clause similarly described the grantees. We have no evidence, apart from this deed, of the events which led to or immediately resulted from the Grant. Recitals in later deeds show that the Rs. 102 annas 15 were paid out of the grantees' own pocket. From this fact Mr. Koek asks me to deduce that grantees were "founders" of the charity for a burial ground for the Seh Chua.

Again, though grantees are described as "Trustees ....." the Grant itself neither creates nor declares any trust in terms. Mr. Koek asks me to deduce that there were no trusts. The facts, however, so far as they go, are capable of other construction than that the grantees were "founders" or that the grant was a mere purchase, unaccompanied by any trust. I think it is inevitable that I should hold that the description of the grantees as "Trustees of the Chinese Burial Ground for the tribe Chua" meant that the grantees had already, prior to the Grant, been appointed trustees as aforesaid, had applied for the Grant in that capacity, and were granted the land as such. I think I am entitled to say that Rs. 11 per acre for land so near the flourishing young Settlement of Singapore even in 1866, was merely a nominal price, and was so fixed of intention and because of the charitable trusts upon which it was known to be alienated.

It is not far-fetched to infer that the grantees were headmen of the Seh Chua and were nominated by the clan to be trustees of a Burial Ground for the clan, to be applied for by them; that they applied to the Government as such nominated trustees, that their application was approved, and the land granted to them on nominal terms for the purpose of such trust.

In circumstances such as these, you cannot credit the grantees with the title of "founders" merely because they paid the (not imposing) sum of Rs. 102 themselves. It does not call for much straining of inference to imagine that the sum was too insignificant to call for a levy or subscription from the clan. On the other hand, when Mr. Koek argues that the Grant of 1866 does not evidence a trust for a tribal burial ground, he can only do so by treating the repeated description of the grantees as "Trustees" as meaningless surplusage. Apart from the confirmation supplied by later deeds, I think it is sufficiently clear from Grant 74 that there was an express trust of the property for the purposes of "a Chinese Burial Ground for the tribe Choa."

Then on 28th August, 1879 Beng Seang and Kit Choon purported to carve 1 acre 3 roods 02 poles out of the trust property, to be set apart as a burial ground for their own families and that of their brother Hood Toh. This strip was conveyed for the nominal consideration of Spanish one dollar to Hood Toh as trustee for named sons of the three brothers, their heirs and assigns for ever, to be used by them as a family burial ground.

This Deed contained two recitals to which I now refer. The first stated that the land comprised in Grant 74 was granted to Beng Seang and Kit Choon "as a burial ground for the tribe Choa." The second recital was

> "And whereas the said vendors" (i.e. Beng Seang and Kit Choon) "paid the purchase money of the said piece of ground out of their own private moneys."

The first of these recitals confirms the construction placed by me upon Grant 74 that the land granted was impressed with the trust that it was to be used as a burial ground for the Seh or tribe of Choa, if any confirmation were needed.

By a Deed Poll dated 6th January, 1903, Kit Choon, as survivor of the two grantees, in reciting Grant 74, stated again that the Grant had been made to him and his brother "as Trustees for the Chinese Burial Ground of the tribe 'Choa.'"

The Deed Poll went on to recite the Indenture of 28th August, 1879, the death of Beng Seang on 3rd August 1882, and the payment of the Rs. 102 annas 15 out of their own pockets. It then made this recital:—

> "And whereas the whole of the said piece of land was used as a burial ground for the tribe or clan Choa and the same was on the 28th day of August, 1885, closed by order of the Municipal Commissioners."

Kit Choon thereafter went on to declare the trusts still to be performed, namely, to keep the land (not including the 1 acre 3 roods 02 poles) free from jungle, and the graves in order, to permit descendants' friends and relatives to worship at the graves, and to respect the closing order of the Municipal Commissioners.

He also purported to provide that all future trustees should be selected only from among his own descendants in the male line. On the same day 6th January, 1903, Kit Choon dealt by an Indenture with the general burial ground, appointing three new trustees, all of the next generation of children of himself and his brothers, Yew Yong, Yew Chip, and Yew Huck, and vesting in them the land (with the exception of the 1 acre

3 roods 02 poles of family burial ground) for all the purposes set out in the Deed Poll of the same date.

On 10th January, 1903, Hood Toh similarly appointed Yew Chip, Yew Huck and Yew Swee to be trustees of the family burial ground upon similar trusts, and vested the land in them.

Yew Yong was described in the Indenture of 6th January, 1903 as of Ipoh, Perak, trader. He did not sign the Indenture and probably never accepted the trusts it created and declared. He appears to have been the last survivor of the three trustees appointed by the Indenture, and to have died in Perak, a poor man, leaving no personal representative. Of his co-trustees of the general burial ground, Chip survived Huck. Chip's son and legal personal representative is first defendant in the suit before me. Of the trustees of the family burial ground, Choa Yew Swee still survives and is fourth defendant in this suit. He is a son of Hood Toh.

In 1908 Chua Cheng Pin, son and legal personal representative of Yew Lim and grandson and legal personal representative of Beng Seang sued the trustees of the family burial ground, Chip, Huck and Swee, and obtained judgment by default for an injunction to restrain them from digging and selling earth, sand and laterite from the family burial ground and for an account of all moneys received by them from farming out or selling such materials and products.

In 1921 the Government acquired under Ordinance No. 49 (Acquisition of Lands) a piece of land about 2.3/4 acres in extent and covering portions both of the general and of the family burial grounds. Before formal acquisition they started to build upon this land. According to Chinese ideas, such building prejudicially affected the "fung-shui" of the burial grounds.

There is, moreover, a sum of money (yet to be ascertained) due from the Government in respect of such acquisition.

Meetings of the clan Choa were accordingly summoned which purported to appoint first a Committee on 19th September, 1921, and then, on 25th September five new trustees, namely the four plaintiffs and Chua Cheng Pin the third defendant already mentioned.

The writ in this suit was issued on 6th February, 1922. On 28th February, 1922, the Attorney General was added as a defendant, by an order of Barrett-Lennard, J.

In June the plaintiffs applied to the same learned Judge to amend the suit further by substituting as plaintiff the Attorney General by relation of the four present plaintiffs. This application was opposed by Mr. Koek on behalf of defendants, 1, 2 and 4, and was on the 3rd July dismissed with costs after the learned Judge had taken time to consider. Neither order, of 28th February or 3rd July, was appealed from.

Before me, Mr. Koek took the objection that the Court had no jurisdiction because the Attorney General was not plaintiff. He relied upon the case of *Yeo Him and ors.* v. *Yeo Cheng Kang and ors.*, reported in 4 Kyshe 500, a decision of the Court of Appeal in Penang, cited to Barrett-Lennard, J.

I hold that Mr. Koek's defendants were estopped by the two orders mentioned from arguing that there was any illegality or irregularity in the position of the Attorney General as a defendant instead of a plaintiff, so long as he was a party to the suit. I also held that the Penang case was not concerned with any question whether the Attorney General should be plaintiff rather than defendant. It was concerned only with the fact that he was not a party at all and should have been following upon their finding that the trust for a Chinese burial ground was a public charity. I held that so far as the necessary presence of the Attorney General was concerned, it was sufficient that he was a defendant.

Then Mr. Koek took the good point that the plaintiffs were not properly constituted trustees and had no *locus standi* to sue in their individual capacity. This defect was cured by an amendment, granted by me upon terms, permitting plaintiffs to sue in a representative capacity on behalf of themselves and numerous others being members of the Seh Choa in Singapore.

The Attorney General by his Defence submitted himself to the judgment of the Court and took no part in the trial.

Plaintiffs, then, on behalf of themselves and the Seh Choa, complain that the conveyance of 1 acre 3 roods 02 poles on 28th August, 1879, was inconsistent with and a breach of the express trusts of Grant 74. They attack also as invalid and/or a breach of trust the attempt of Choa Kit Choon to restrict the selection of future trustees of the general burial ground to his own descendants in the male line. This last point I understand to be conceded by Mr. Koek's defendants, so far as the general trusts are concerned. It would have been different if they had been "founders" of the charity (*A. G.* v. *Boucherett*, 25 Beav. 116.) Plaintiffs also allege as breaches of trust the failure to keep the land clear of lalang and brush wood, the events of 1908, (though these concerned only the family burial ground), and the failure to prevent the "invasion" of the Government, though this last matter is dropped by Mr. Mundell, as was an allegation that graves were disturbed in the course of the building.

The plaintiffs therefore claim to have the three Indentures of 28th August 1879, 6th

January 1903, and 10th January, 1903 and the Deed Poll of 6th January 1903 rescinded and cancelled, the removal of any of the defendants who may be trustees, and the appointment of Cheng Pin (3rd defendant) and themselves as new trustees.

This matter of the appointment of new trustees was postponed by me until I should decide whether or not the conveyance of 28th August, 1879, was wrongful and a breach of trust.

The sole issue now left for my present decision is whether the conveyance of the legal estate in the family burial ground to separate trustees was wrongful and ought to be rectified.

In the course of the argument the ground was cleared considerably. It is not now contended that the reservation or allocation of the 1 acre 3 roods 02 poles for graves for the family of the first trustees was wrongful or improper or a breach of trust. It is only the creation of a separate trust and a separate legal estate that is attacked. It was proper enough and in accordance with good Chinese ideas that the heads of the clan (for the purposes of the burial ground) should have special allocations, or reserves for their family graves. It will be seen how Choa Kit Choon looked upon the reservation. In the Deed Poll of 6th January, 1903, he recites that "the whole of the said piece of land was used as a burial ground for the tribe or clan Choa." I have no doubt he included the family burial ground in that statement and claimed that its reserved use was nevertheless in full accordance with the general trusts for the clan, and in no way inconsistent with them.

But by the very same token, if the trusts were all one and homogeneous, how could he consistently sever the legal estate? The whole land was admittedly conveyed to and accepted by Beng Seang and Kit Choon as trustees for the whole clan, upon express trusts. It could not matter that they advanced the purchase price themselves and did not collect funds for the purpose from their clansmen. A preferential allocation of good sites for a burial ground of their own family was not inconsistent with those trusts. An alienation of the land away from the clan and the clan's burial ground, clearly was. It was a breach of trust, however innocently and however honestly (though mistakenly) Beng Seang and Kit Choon believed that their payment of the purchase price with their own money, entitled them so to deal with the land.

Mr. Koek however sets up limitation and alternatively, acquiescence. This is essentially a suit to follow trust property, the subject of an express trust, and falls under section 10 of the Limitation Ordinance. If the doctrine of acquiescence could possibly apply in such a case, it would depend upon notice. There is no evidence at all of any notice to any member of the clan, apart from the original grantees' own families, of the conveyance of the 1 acre 3 roods 02 poles. The allocation was publicly known. Not so the conveyance, so far as the evidence goes.

The Court will be loth always to interfere with administrative arrangements of a charity like this. The Conveyance of August, 1879, however, went further than any matter of mere administration. It amounted to a making away with trust property.

At this stage I make no consequential orders. I am in hopes that the matter may be set right as the result of a consultation between the parties and with as little hurt as may be to the susceptibilities of any party.

I therefore adjourn the suit to the November sittings to enable the parties to reconsider their position.

Solicitors for the Plaintiffs—
Braddell Brothers.
Solicitor for the Defendants—*E. R. Koek.*

[DISTRICT COURT, SINGAPORE]

PRYDE, D.J.

October 18, 1924.

SOONG VOON SEN v. ANG KIONG HEE.

[CASE No. 617 of 1924]

Application by wife for maintenance—Ordinance 96, S. 38 (1)—Validity of Chinese marriage.

A Chinese marriage ceremony performed in the "Reformed" style confers upon the woman at least the status of a secondary wife; whether it confers the status of a principal wife not decided.

Summons.

A summons was taken out by the Complainant Soong Voon Sen against her husband Ang Kiong Hee claiming maintenance under Ordinance 96, S. 38 (1). The Complainant alleged that she was on the 3rd February, 1923, married to Ang Kiong Hee in the reformed style. The Complainant and Defendant went to the Chinese Literary Society in Singapore and there went through a form of marriage ceremony. The Complainant in the presence of witnesses acknowledged that she was willing to take the Defendant as her husband and he similarly acknowledged that he was willing to take her as his wife. Rings were exchanged and all parties signed in duplicate a form of marriage certificate. A tea party was held and photographs taken. The intention of the parties was to celebrate a valid first marriage. The Defendant having failed to support his wife she applied to the Court for maintenance.